State Implementation Matrix:
Food Safety Modernization Act Produce Safety Rule

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Agenda:

1. Research Process
2. National Trends
3. Northeast State Implementation
4. Common Variations in State Law
Research Process

- Searching for statutes and regulations in state-enforced, non-credentialed states
- Direct outreach to state departments of agriculture
- Continuous research
National Trends

- FDA Inspections/Enforcement: IL, ND, OR, SD, WY
- Credentialed System vs. State Statutes/Regulations Enacted
  - Fairly even split between states
  - Some states are acting under a credentialed system for now, but plan on enacting their own statutes
- A few states - little/no information found
- Common variations among state statutes
**Northeast Implementation**

No NE states are FDA enforced

**Credentialed States:**

- Maine (statute affirming credential status, 7 M.R.S.A. § 286 (2017))
- Massachusetts (statute affirming credential status, M.G.L.A 128 § 124 (2018)) (?)
- New Jersey
- Pennsylvania

**Statutes/Regulations:** Connecticut, Delaware (?), Maryland, New Hampshire, New York, Rhode Island, Vermont

**Enforcing Agencies:** Department/Division of Agriculture, or equivalent
Connecticut


- Department may enforce the federal standards, as amended

- Produce farm inspections: comply with federal requirements; reasonable hour; may issue inspection certificate

- May inspect a farm not required to comply with the federal act, upon request of the owner/operator

- Recordkeeping required by any farm subject to the federal act OR any owner/operator who requests an inspection

- Department may issue enforcement orders (not exhaustive): embargo, destruction, quarantine, and release of produce
Delaware

3 Del. C. § 101. Powers (2018). Department of Agriculture may ... (1) abate, suppress, eradicate, and prevent...infectious and injuriously dangerous diseases of [food]; (3) make and adopt rules; (6) collect samples

- Establishes procedures for:
  - Registration. Required for all produce farms within Delaware.
  - Inspections. Any produce farm or facility; any time; Inspectional Report form will be given
  - Enforcement Actions. Dep’t may seize, take possession of, condemn, destroy, or require destruction of covered produce in violation of Federal Rule; objectionable conditions must be reported to FDA.
  - Violations and Hearing Procedures
  - Appeals
  - Civil penalties. $1000-$5000 for each count.
Maryland - “[S]hall conform with the federal standards”


- Records: Fully covered and QE farms. Records are confidential with exceptions.
- Inspections: fully covered, QE, and exempt farms; reasonable time; may issue a written or printed stop-sale order to a farm in violation
- May adopt regulations
- Action for an injunction to enforce or prevent a violation
- May detain covered produce found in violation
- Petition for condemnation may be filed by the Secretary
- Subpoenas and administrative search warrants
- Penalties and fines
New Hampshire - Incorporated by reference

- FSMA PSR incorporated by reference and any subsequent amendments
- Inspections: any produce farm; reasonable hours; determine compliance with federal standards & state rules; may issue certificate
- Maintain records required by the federal rule and state rules
- Commissioner shall adopt rules (below)

Chapter Agr 3900. Produce Safety Farm Inspections
- Owner/operator of a farm shall comply with the federal rule
- Inspections: routine inspections shall be conducted (every 3 yrs); farms conducting covered activity
- Record keeping: adhere to federal rule
New York - Adopts the federal rule (exceptions)
- Adopts the federal rule
- Except: the Commissioner will not determine the eligibility of a farm or a QE and does not adopt parts E (agricultural water), P (variances), Q (compliance and enforcement), and R (withdrawal of qualified exemption)

Agriculture and Markets Law, § 214-B. Regulations. Enact legislation uniform with the federal act and all acts amendatory thereof and supplemental thereto; commissioner is authorized to adopt regulations
Rhode Island - Adopts the federal rule

RI ST § 2-1-10(b). Inspection Powers (2017). The director shall enforce the FSMA as it pertains to commercial growers of fruits and vegetables

250-RICR-40-00-2. Produce Safety Rule (2019). Adopt minimum standards established by the federal rule by reference, not including further editions or amendments to the extent the provisions are not inconsistent with state regulations.
Vermont


- Secretary may enforce the federal rule and state rules
- Inspections: produce farm; reasonable hours; to ensure compliance
- Maintain records required by FSMA, FSMA Rules, and state rules
- Secretary may adopt rules
- When secretary finds a violation, the Secretary may issue a written warning
- Enforcement actions: cease and desist; administrative order (stop sale, recall, embargo, destruction, quarantine, and release of produce); mandatory corrective actions; seek administrative or civil penalties
- Appeals to the Civil Division of the Superior Court; within 30 days of final decision
Common Variations in State Law:

1. Inspections:
   - Department *may or shall* enter and inspect just farms conducting a covered activity or ANY produce farms? Can non-covered farms request an inspection?
   - Enter at a reasonable time or any time?
   - Inspection reports: required or voluntary?
   - Regular inspections specified?

2. Penalties and fines: Monetary amounts may vary. No NE states mentioned criminal liability in their statutes, only civil penalties.

3. Records: In CT non-covered farms are required to keep records if the owner/operator requests an inspection.

3. Commissioner/Secretary/State *shall or may adopt rules*?

4. Subsequent amendments to or editions of the Federal Rule also adopted?